

## **3 FAM 4430 AGENCY PROCEDURES**

*(CT:PER-651; 09-02-2011)  
(Office of Origin: HR/G)*

### **3 FAM 4431 INITIAL CONSIDERATION**

*(CT:PER-651; 09-02-2011)  
(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)  
(Applies to Foreign Service Employees Only)*

- a. Grievances shall be considered through the steps provided in this subchapter before they are filed with Grievance Board.
- b. During the pendency of agency procedures under this subchapter and upon request of the grievant, the agency shall suspend its action in the following instances:
  - (1) Recovery from the grievant of alleged overpayment of salary, expenses, allowances, or erroneous payments; and
  - (2) Suspension, separation, and termination.
- c. The request must be in writing and addressed to the responsible official of the agency, as designated in section 3 FAM 4434.2, stating the reasons for such suspension.
- d. The agency shall suspend the actions unless the grievance is not integral to the proposed action.
- e. The agency shall suspend its proposed action until completion of agency procedures and for a period thereafter of 15 days to permit the grievant to file a grievance with the Board and to request further interim relief.
- f. Nothing in these regulations shall be deemed to preclude an employee from requesting the suspension of any proposed action.

### **3 FAM 4432 CONSIDERATION BY RESPONSIBLE OFFICER**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)*  
*(Applies to Foreign Service Employees Only)*

- a. While every effort should be made to resolve a complaint at the onset by means of a discussion between a member and the supervisor or responsible officer, a member may present the complaint as a grievance by submitting it in writing to that person. (The term “responsible office” used herein includes any officer who has immediate jurisdiction over the complaint.) The complaint should be as complete as possible. The presentation should include:
  - A description of the act or condition which is the subject of the grievance
  - Its effect on the grievant
  - Any provisions of law, regulation, or agency policy which the grievant may believe was violated or misapplied
  - Any documentary evidence readily available to the grievant on which the grievance rests
  - The identity of individuals having knowledge of relevant facts
  - A statement of the remedial action requested
- b. The responsible officer shall use independent judgment in deciding whether the grievance is meritorious and what the resolution should be. Within 15 days from receipt of the written grievance, the responsible officer shall provide the grievant with a written response, which shall include a statement of any proposed resolution of the grievance.
- c. If the response denies in whole or in part the remedial action requested, such response shall notify the grievant of the time within which to appeal the decision and the identity of the senior official, or designee, to whom the appeal should be addressed. In those cases in which the senior official, or designee is the responsible officer to whom the grievance was initially presented or has participated in the decision process and has formally approved the written response of the responsible officer, the grievant shall be so notified and advised that the grievance may be submitted directly to the agency under section 3 FAM 4434.

### **3 FAM 4433 BUREAU OR POST REVIEW**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

- a. If the responsible officer's written response does not resolve the grievance to the grievant's satisfaction within ten days of receiving it (or, if no response is received, within 25 days after first presenting the grievance), the grievant may pursue the grievance by transmitting it in writing to the senior official, or the designee, in the bureau or post which has authority to resolve the grievance. The written transmission shall include all the information required in section 3 FAM 4432 a and copies of any correspondence under sections 3 FAM 4432 b and c.
- b. Within 15 days from receipt of the grievance, the senior official shall provide the grievant with a written decision, including any proposed resolution of the grievance. If the decision denies in whole or in part the remedial action requested, the communication shall notify the grievant of time within which to submit the grievance for agency review and the identity of the appropriate agency official to whom the grievance should be addressed.

## **3 FAM 4434 AGENCY REVIEW**

### **3 FAM 4434.1 Submission**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

An employee may submit the grievance for agency review if the grievance:

- (1) Is not within the jurisdiction of a post or bureau; or
- (2) Has been considered but not resolved to the grievant's satisfaction within the post or bureau as provided in section 3 FAM 4433 within ten days after receipt of the post's or bureau's decision (or, if no response is received, within 25 days after presenting it to the senior official or the designee.

The grievant shall submit the grievance in writing to the responsible official of the agency which has control of the act or condition which is subject to the grievance.

### **3 FAM 4434.2 Responsible Officials**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)  
(Applies to Foreign Service Employees Only)*

The responsible officials of the agencies are:

- (1) State Deputy Assistant Secretary for Personnel;
- (2) USAID Director, Office of Personnel Management or designee;
- (3) USIA Chief, Labor Relations Staff (M/PPL);  
Chief, Labor and Employee Relations Division (B/PL);
- (4) Commerce Director, Office of Foreign Service Personnel,  
Foreign Commercial Service;
- (5) USDA FAS: Director, Human Resources Division,  
Farm Service Agency; and
- (6) APHIS: Director, Human Resources  
Division, Animal & Plant  
Health Inspection Service.

### **3 FAM 4434.3 Contents**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)  
(Applies to Foreign Service Employees Only)*

A request for agency review shall include:

- (1) A description of the act or condition which is the subject of the grievance;
- (2) Its effect on the grievant;
- (3) Any provisions of law, regulation, or agency policy which the grievant may believe was violated or misapplied;
- (4) Copies of any correspondence under sections 3 FAM 4432 and 3 FAM 4433;
- (5) Any documentary evidence readily available to the grievant on which the grievance rests;
- (6) The identity of individuals having knowledge of relevant facts; and

- (7) A statement of the remedial action requested.

### **3 FAM 4434.4 Agency Decision**

*(CT:PER-651; 09-02-2011)*

*(Uniform State/USAID/Commerce/Foreign Service Corps - USDA)*

*(Applies to Foreign Service Employees Only)*

- a. The responsible official shall review the grievance on the basis of available documentary evidence, and in that official's discretion, interview persons having knowledge of the facts. The agency review shall be completed and its decision provided within 90 days from the date of receipt of the initial written presentation of the grievance. The grievant shall be informed in writing of the findings of the responsible official and any proposed resolution of the grievance. The communication shall also include the time within which the grievant may file a grievance with the Grievance Board and the appropriate procedures to be followed in this respect, and whether the grievant is a member of the bargaining unit. If the grievant is a member of the bargaining unit, the agency shall provide the exclusive representative with a copy of any communications to the Board, and so inform the grievant.
- b. The responsible official reviewing a grievance covered under 3 FAM 4412 c(8) may not substitute his/her judgment on the level or the granting of a clearance but must, upon finding of improper action, return the case to the agency's security office for reconsideration in accordance with the finding.
- c. If the grievance is denied in whole or in part, the agency shall, upon request from the grievant, identify the persons interviewed.
- d. If the grievant is represented, and has so informed the agency, the agency shall transmit a copy of its decision to the named representative. Where the exclusive representative is not the representative of record, the agency will inform the grievant that a copy of the decision will be sent to the exclusive representative. If the grievant objects, the agency will provide the exclusive representative with a name deleted copy of the decision.
- e. If a settlement discussion is held between the agency representative and a grievant, the exclusive representative will be given notice and the opportunity to attend.

### **3 FAM 4435 THROUGH 4439 UNASSIGNED**